

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA**

IN THE MATTER OF)	Case No. BK 17-81127-TLS
)	
EAT FIT GOT HEALTHY FOODS, LLC et al ¹)	Chapter 11
)	
Debtors.)	Lead Case

SECOND OMNIBUS MOTION TO REJECT UNEXPIRED LEASES

COMES NOW Eat Fit Go Healthy Foods, LLC et al., debtors and debtors-in-possession in the above captioned Chapter 11 bankruptcy case ("Debtors"), pursuant to 11 U.S.C. § 365 and Fed R. Bank. P. 6006, and in support of this Second Omnibus Motion to Reject Unexpired Leases (the "Motion"), states and alleges as follows:

Procedural Background

1. On July 31, 2018 (the "Petition Date") Debtors filed 10 separate voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Court (the "Related Cases") in the United States Bankruptcy Court for the District of Nebraska (the "Bankruptcy Court").
2. Each Debtor remains in possession of its assets and continues to operate as debtor-in-possession in accordance with 11 U.S.C. §§ 1107 and 1108.
3. An Official Committee of Unsecured Creditors has not yet been appointed in any of the Related Cases.
4. This is a core proceeding pursuant to 28 U.S.C. §157(2)(A).
5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334.
6. Venue is proper in this Court pursuant to 28 U.S.C. §1408.

¹ The Debtors in this case include: Eat Fit Go Omaha Kitchen, LLC, Eat Fit Go Kansas City Kitchen, LLC, Eat Fit Go Georgia Kitchen, LLC, Eat Fit Go Arizona Kitchen, LLC, Eat Fit Go Healthy Foods - Des Moines, LLC, Eat Fit Go Healthy Foods - Kansas City, LLC, EFG Shared Services, LLC (No Rev), Eat Fit Go Healthy Foods - Omaha, LLC, and Eat Fit Go Healthy Foods - Minnesota, LLC.

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Debtors' Background

7. It is estimated that the United States spends \$190.2 billion each year on obesity-related medical costs, with \$14 billion of that on childhood obesity alone. Obesity-related illnesses cause an estimated 300,000 deaths each year, making obesity the 2nd biggest killer behind tobacco. More, decades have been spent on the development and manufacture of processed foods (engineered to make food last longer and stretch further). Founded in 2015, Debtors aimed to revolutionize the way Americans think about and acquire food by providing chef-made meals that are made fresh daily, never frozen, low in sodium, high in protein, and allergy-friendly.

8. Distinct from the large meal kit delivery companies, Debtors business operations offer a one stop shopping where a customer can purchase breakfast, lunch, dinner, and snacks that are pre-cooked, pre-portioned, ready-to-eat meals. Capitalizing on a growing trend in healthy foods, Debtors opened its first store in February of 2016, in Omaha, NE, and has grown to 33 stores across eight states utilizing a mix of franchised locations and corporate owned stores. Beyond the rapidly increasing number of storefronts, Debtors have plans to expand into eCommerce with a delivery and a health and wellness mobile app with the goal of delivering healthy foods to customers' doors within 24 hours.

Relation of Debtors

9. Each of the Debtors is a legally separately entity. With the exception of Eat Fit Go Healthy Foods – Omaha, LLC, each of the other Debtors (the "Subsidiaries") is a wholly-owned subsidiary of Eat Fit Go Healthy Foods, (the "Parent").² Each of the Subsidiaries and the Parent is an integral part of Debtors' ongoing operations, be it as a manger of operations, corporate

² Eat Fit Go Healthy Foods, LLC is the managing member of Eat Fit Go Healthy Foods – Omaha, LLC.

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stores, corporate kitchens, leaseholders, and the like. In addition, Debtors utilize common branding for their operations.

Relief Requested

10. As part of its ordinary course operations, Debtors have entered into a number of a non-residential real property leases. Debtors have identified certain leases that require immediate rejection due to the financial burdens they place on Debtors' operations. A list of these leases is attached hereto as Exhibit "A" (the "Leases").

11. Sound business justifications exist for the immediate rejection of the Leases.

12. As part of its pre-bankruptcy efforts to restructure outside of these proceedings, Debtors undertook extensive steps to identify underperforming operations that acted, in effect, as a capital drain on Debtors' overall business operations. Through this process, Debtors have identified three locations that need to be and have in fact been closed as of August 31, 2018. In addition, Debtors have previously terminated a franchise agreement with JJ&D Enterprises, LLC ("JJ&D"). JJ&D was the operator of an Eat Fit Go location in Lawrence, Kansas, which was shut down by JJ&D prior to the petition date. While the landlord of the Lawrence, Kansas location has or will address its rights with respect to JJ&D as tenant, an addendum to the lease between the landlord and JJ&D offers Debtors a option to take over the lease in the event of a default by JJ&D. Debtors have decided they will not pursue this option. As a result, the Leases are no longer needed and require immediate rejection.

13. Debtors therefore seek to reject the Leases, which are unexpired leases under 11 U.S.C. §365, effective as of the date hereof.

14. Pursuant to 11 U.S.C. § 365(a), Debtors may, subject to the Court's approval, reject any executory contract or unexpired lease to which Debtors are a party.

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15. In deciding whether to grant Debtors' Motion, the Court should note that the business judgment rule applies to "the rejection of an executory contract under § 365 of the Bankruptcy Code...[and] under the business judgment standard, the question is whether the termination of the [contract or lease] is in the debtors' best economic interests, based on the Debtors' best business judgment in the circumstances. This standard is satisfied when a debtor shows that the action to be taken will benefit the estate." *In re Farmland Industries, Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003).

16. Based on the reasons stated herein, Debtors have determined, in their reasonable business judgment, that the rejection of the Leases, effective as of the date hereof, will benefit the estate through avoidance of costs associated with assumption of the Leases and the avoidance of future obligations under the Leases.

COMPLIANCE WITH FED. R. BANK. P. 6006(f)

17. THIS IS AN OMNIBUS MOTION AND IS RELATED TO MULTIPLE LEASES WITH MULTIPLE LESSORS / LESSEES. IF YOU ARE RECEIVING THIS MOTION IT IS BECAUSE A LEASE BETWEEN YOU AND THE DEBTORS MAY BE AFFECTED HEREBY. YOU ARE ENCOURAGED AND DIRECTED TO LOCATE YOUR NAME / RELEVANT INFORMATION ON EXHIBIT "A" ATTACHED HERETO, WHICH IS ORGANIZED ALPHABETICALLY BY NAME OF THE APPLICABLE LESSOR.

18. The Debtors are not seeking permission to assume the Leases at this time.

19. The Debtors are not seeking permission to assign the Leases at this time.

WAIVER OF THE FOURTEEN-DAY STAY IN FED. R. BANKR. P. 6006

20. Finally, and for the reasons stated herein, Debtors submit there is sufficient justification for a waiver of the fourteen-day stay of an order approving this Motion. If the

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Leases are not rejected as soon as possible there exists the possibility of increased administrative expense costs, increased claims, and a decrease in Debtors' cash. Accordingly, cause exists to waive the fourteen-day stay under Fed. R. Bankr. P. 6006.

RESERVATION OF RIGHTS

21. Nothing herein is intended to be or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under §365 of the Bankruptcy Code, including Debtors' ability to seek a determination that the Agreement or any other leases with the City are not true leases and, therefore, not subject to assumption or rejection under §365 of the Bankruptcy Code. The Debtors expressly reserves their rights to contest any alleged claim arising from or related to any obligation or agreement described herein.

WHEREFORE, Debtors respectfully pray that this Court enter an Order granting this Motion in full, approving and authorizing the rejection of the Leases effective as of the date hereof, and granting any other relief at equity or law this Court deems necessary.

Respectfully submitted this 10th day of September, 2018.

**EAT FIT GOT HEALTHY FOODS, LLC,
Debtor**

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EXHIBIT A – LEASES

Property Description	Lessor Name	Lessee Name	Document Title	Lease Date
Board of Trade: 4800 Main St., Suite 104, Kansas City, MO 64112	MREM BOT Property, LLC c/o AREA Real Estate Advisors 4800 Main Street, Ste 400 Kansas City, MO 64112	Eat Fit Go Healthy Foods – Kansas City, LLC	Lease Agreement	August 31, 2016
Farnam: 1403 Farnam Street, #124, Omaha, Nebraska, 68102	Paxton Group LLC c/o Elkco Properties, Inc. 999 South Logan Street, Suite 300 Denver, CO 80209	Eat Fit Go Healthy Foods – Omaha, LLC	Lease Agreement	May 27, 2016
Millard: 4909 S 135th St., Ste. 104, Omaha, NE 6813	Jason Lanoha c/o Lanoha 135 Millard LLC 19111 West Center Rd. Omaha, NE 68130	Eat Fit Go Healthy Foods – Omaha, LLC	Lease Agreement	May 19, 2016
525 Wakarusa Drive Suite 102A Lawrence, KS 66049	Wakarusa Landing, LLC c/o Kevin J. Grauberger Riordan, Fincher & Beckerman, P.A. 3735 SW Wanamaker Road Suite A Topeka, KS 66610	Eat Fit Go Healthy Foods, LLC	Addendum to Lease	November 2, 2016